

STATE OF MICHIGAN
COURT OF APPEALS

JOAN WILLIAMS,

Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant,

and

JASMINICA SEHIC and OMER JAKUPOVIC,

Defendants-Appellants.

UNPUBLISHED

August 21, 2007

No. 269350

Wayne Circuit Court

LC No. 05-508616-NI

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendants Sehic and Jakupovic (“defendants”) appeal by leave granted from a circuit court order denying their motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff seeks to recover noneconomic damages for injuries – or the aggravation of preexisting injuries – caused by a May 2003 automobile accident. Defendants moved to dismiss on the ground that plaintiff’s injuries did not affect her general ability to lead her normal life. The trial court denied the motion, ruling that plaintiff’s psychological injuries were important and had significantly changed her life. We review the trial court’s ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A person is subject to tort liability for automobile negligence if the injured person “suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7). In *Kreiner v Fischer*, 471 Mich 109, 131; 683 NW2d 611 (2004), the Court established a “multi-step process . . . to provide the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not.” In this case, we find dispositive the last factor, i.e., whether the impairment

affected the plaintiff's general ability to lead her normal life. *Id.* at 132. In answering this question, the court is to compare the plaintiff's life before and after the accident and consider "the significance of any affected aspects on the course of the plaintiff's overall life." *Id.* at 132-133. Factors to consider include "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Id.* at 133. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his life." *Id.* (emphasis in original). In other words, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Id.* at 137.

We agree with defendants that any negative consequences on plaintiff's life because of the accident did not affect her general ability to lead her normal life. Before the accident, plaintiff was suffering from both physical and psychological problems. The physical problems affected her ability to move her neck and back and her ability to walk. She had been undergoing regular chiropractic adjustments and physical therapy for years and her prognosis was "guarded." She was described as "not medically stationary" and was advised against prolonged movement of various types. Consequently, she relied on others to assist her with many aspects of daily living such as transportation, ambulating, cooking, cleaning, shopping, minor household repairs, and yard work. The psychological problems left her feeling helpless and depressed and caused her to isolate herself from others. She also had problems with her memory. She had treated with a psychiatrist for years. After the accident, plaintiff suffered from the same physical problems and continued receiving the same treatment with the same prognosis. She was described as "not medically stationary" and was advised against prolonged movement of the same types. Hence, she continued to rely on others to assist her with the same aspects of daily living. Plaintiff continued to suffer from the same psychological problems and continued treating with a psychiatrist. The only purported effect on plaintiff's overall life was that she felt worse and felt that her life had changed. However, assessment of the pertinent *Kreiner* factor requires that the court "engage in an *objective* analysis regarding whether any difference between plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's 'general ability' to conduct the course of [her] life." *Id.* at 133 (emphasis added). Plaintiff's pre- and post-accident life, when viewed objectively, changed very little. Consequently, reasonable minds could not differ in finding that any injuries incurred in the accident or any aggravation of a preexisting condition did not affect plaintiff's general ability to lead her normal life.

Reversed and remanded for entry of summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood